

### § 3.850

payments under this section. The provisions of 38 U.S.C. 5121(c) and § 3.1000(c) requiring survivors to file claims for accrued benefits also do not apply to payments under this section. When a *Nehmer* class member dies prior to receiving retroactive payments under this section, VA will pay the amount to an identified payee in accordance with paragraph (f)(1) of this section without requiring an application from the payee. Prior to releasing such payment, however, VA may ask the payee to provide further information as specified in paragraph (f)(3) of this section.

(3) *Identifying payees.* VA shall make reasonable efforts to identify the appropriate payee(s) under paragraph (f)(1) of this section based on information in the veteran's claims file. If further information is needed to determine whether any appropriate payee exists or whether there are any persons having equal or higher precedence than a known prospective payee, VA will request such information from a survivor or authorized representative if the claims file provides sufficient contact information. Before releasing payment to an identified payee, VA will ask the payee to state whether there are any other survivors of the class member who may have equal or greater entitlement to payment under this section, unless the circumstances clearly indicate that such a request is unnecessary. If, following such efforts, VA releases the full amount of unpaid benefits to a payee, VA may not thereafter pay any portion of such benefits to any other individual, unless VA is able to recover the payment previously released.

(4) *Bar to accrued benefit claims.* Payment of benefits pursuant to paragraph (f)(1) of this section shall bar a later claim by any individual for payment of all or any part of such benefits as accrued benefits under 38 U.S.C. 5121 and § 3.1000.

(g) *Awards covered by this section.* This section applies only to awards of disability compensation or DIC for disability or death caused by a disease

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listed in paragraph (b)(2) of this section.

(Authority: 38 U.S.C. 501)

[68 FR 50970, Aug. 25, 2003]

#### INCOMPETENTS, GUARDIANSHIP AND INSTITUTIONAL AWARDS

### § 3.850 General.

(a) Payment of benefits to a duly recognized fiduciary may be made on behalf of a person who is mentally incompetent or who is a minor; or, payment may be made directly to the beneficiary or to a relative or other person for the use of the beneficiary, regardless of legal disability, when it is determined to be in the best interest of the beneficiary by the Veterans Service Center Manager.

(Authority: 38 U.S.C. 5502)

(1) Unless otherwise contraindicated by evidence of record payment will be made direct to the following classes of minors without any referral to the Veterans Service Center Manager:

(i) Those who are serving in or have been discharged from the military forces of the United States; and

(ii) Those who qualify for survivors benefits as a surviving spouse.

(2) Unless otherwise contraindicated by evidence of record, immediate payment of benefits may be made to the spouse of an incompetent veteran having no guardian for the use of the veteran and his or her dependents prior to referral to the Veterans Service Center Manager. (Sec. 13.57 of this chapter.)

(b) When payments have been discontinued or withheld from a fiduciary, benefits may be temporarily paid to the person having custody of the minor or incompetent.

(c) Where a child is in the custody of a natural, adoptive or stepparent, benefits payable on behalf of such child may be paid to the parent as custodian of the child.

(d) Benefits due a minor or incompetent adult Indian who is a recognized ward of the Government, for whom no fiduciary has been appointed, may be paid to the proper officer of the Indian Service designated by the Secretary of

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the Interior to receive funds for said person.

[26 FR 1606, Feb. 24, 1961, as amended at 27 FR 5431, June 8, 1962; 38 FR 29076, Oct. 19, 1973; 39 FR 34532, Sept. 26, 1974; 40 FR 36329, Aug. 20, 1975; 41 FR 12656, Mar. 26, 1976; 45 FR 27436, Apr. 23, 1980; 67 FR 46868, July 17, 2002]

### § 3.851 St. Elizabeths Hospital, Washington, DC.

Benefits due or becoming due any person who is a patient at St. Elizabeths Hospital will be paid to a duly appointed fiduciary of such person. The benefits payable to a veteran who has no spouse, child, or dependent parent will be paid by an institutional award in accordance with § 3.852 if there is no such fiduciary. Benefits payable to veterans' dependents who are patients at this hospital will be paid direct or to a fiduciary of such dependent, except that any awards now being paid to the superintendent will be continued while such dependent remains a patient.

[39 FR 34532, Sept. 26, 1974, as amended at 45 FR 27436, Apr. 23, 1980]

### § 3.852 Institutional awards.

(a) When an incompetent veteran entitled to pension, compensation or retirement pay is a patient in a hospital or other institution, payments on his (or her) account may be made to the chief officer of a Department of Veterans Affairs or non-Department of Veterans Affairs institution:

(1) When no fiduciary has been appointed or when payments to an unsatisfactory fiduciary have been discontinued;

(2) When the Veterans Service Center Manager certifies that a fiduciary is not furnishing the chief officer funds required for the veteran's comforts and desires not otherwise provided by the institution.

(Authority: 38 U.S.C. 501(a); 5307; 5502)

(b) In an institutional award of pension, compensation or retirement pay there may be paid to the chief officer of a non-Department of Veterans Affairs institution on behalf of the veteran an amount not in excess of \$60 per month. An institutional award of disability pension will not exceed \$25 per

month if the award is apportionable under § 3.454(a).

(Authority: 38 U.S.C. 501)

(1) All sums, otherwise payable in excess of the institutional award, apportionments or awards to fiduciaries, will be deposited in Personal Funds of Patients.

(2) There may be paid on behalf of a veteran, having no spouse, child or dependent parent and receiving care in a non-Department of Veterans Affairs institution, such additional amount, within the limit of the total payable and as may be certified by the Veterans Service Center Manager, needed for the benefit of the veteran and to pay for his (or her) care and maintenance. Moneys on deposit in Personal Funds of Patients will not be used for this purpose except as authorized by the Veterans Service Center Manager under § 13.72 of this chapter.

(3) If the veteran has dependents, or more is payable under his (or her) rating, or there are funds to his (or her) credit in "Funds Due Incompetent Beneficiaries," such additional amount as may be needed will be allowed on the basis of a certification by the chief officer with respect to need and amount required.

(c) Where there arises a situation as enumerated in paragraph (a)(1) of this section, apportionment to dependents will be under § 3.451.

(Authority: 38 U.S.C. 5307)

(d) Any excess funds held by the chief officer of a non-Department of Veterans Affairs institution, not necessary for the benefit of the veteran, will be returned to the Department of Veterans Affairs or to a fiduciary, if one is serving. Upon death of a veteran with no surviving heirs, excess funds will be returned to the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5502)

CROSS REFERENCES: Veterans Benefits Apportionable. See § 3.452. Payment to Chief